## REMARKS/ARGUMENTS

Claims 1-29 remain in this application. Claims 1-29 are rejected in the office action of January 24, 2003.

### Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 4, 14, and 21 are rejected under 35 U.S.C. 112, second paragraph as vague and indefinite because they recite a range for the amount of food bits added to the claimed snack bar, expressed in mL. Applicant respectfully disagrees with the assertion that measuring a volume of solid particles is vague or indefinite. The term "milliliter" itself is not vague, but rather, is very well defined based on the SI unit of volume (1 mL = $10^{-6}$ $m^3$). Additionally, Applicant would like to point out that it is common, especially with respect to recipes, to measure solid, particulate food, such as flour, sugar, nut chunks, candied bits, crisped rice, raisins, and so forth, by volume—generally in cups in the US, which are easily converted to milliliters (1 cup = 236.588 milliliters.)

Applicant submits that the use of volume to measure food bits is not vague or indefinite, and requests Examiner to withdraw this rejection.

### Rejections under 35 U.S.C. 103(a)

Claims 1-29 are rejected under 35 U.S.C. 103(a) as unpatentable over Wong *et al.*, US Patent No. 5,667,838 (hereinafter referred to as "Wong") in view of Brabbs, US Pat. No. 4,596,714 (hereinafter referred to as "Brabbs") and the Jif recipes.

No combination of Wong and Brabbs or Wong and the Jif recipes teaches or suggests a snack bar comprising a center portion, wherein the center portion comprises at least about 45% super-stabilized nut spread, as claimed in the present application. Nowhere do Wong, Brabbs, or Jif recipes, or any combination thereof, teach or suggest a super-stabilized nut spread. Nowhere do Wong, Brabbs, Jif recipes, or any combination thereof teach or suggest a process for making a super-stabilized nut spread. Wong teaches a regular, **not** super-stabilized, nut spread, and

Brabbs and Jif recipes teach using regular, **not** super-stabilized, nut spreads in baked goods, and various desserts, respectively.

Wong is directed to a regular nut spread, not a super-stabilized nut spread. Wong, in fact, is specifically mentioned in Applicant's specification as a suitable starting nut spread material for making the super-stabilized nut spread. (Page 4, lines 9-10). After listing several suitable starting nut spread materials, including Wong, Applicant explains why these nut spreads, which are not super-stabilized, must be super-stabilized before they can be incorporated into the claimed snack bar:

> Such nut spreads, sufficiently stabilized for use as nut spreads, however, are too soft to form a snack bar and continue to be prone to oil separation when incorporated into confectionary centers or snack bar products due to the destruction of the crystalline network inherent in the mixing steps and/or heating steps used in confectionary manufacturing. Specification, page 4, lines 28-32.

Clearly the nut spreads of Wong, *i.e.*, peanut butter, have significantly different properties from the super-stabilized nut spreads claimed in the present application, and cannot be used in Applicant's claimed invention without first being super-stabilized.

Brabbs teaches making baked, filled snack products, and does specifically teach using nut spreads as a possible filling. Brabbs also discloses two embodiments wherein peanut butter is used as the filling. Specifically, Brabbs teaches the use of creamy JIF® peanut butter, without any additional stabilization, *i.e.*, super-stabilization, in his invention. See Brabbs, column 8, lines 34-36 and 54-55. Nowhere does Brabbs teach using super-stabilized peanut butter as a filling. Nowhere does Brabbs teach or suggest first super-stabilizing the peanut butter before using it in his invention.

At most, combination of Wong and Brabbs would lead one to substitute the nut spread of Wong for the creamy JIF® of Brabbs. Combination of Wong and Brabbs would not lead one to use a super-stabilized nut spread because neither Wong nor Brabbs teaches or suggest a super-stabilized nut spread. As taught by Applicant in the specification, the use of a nut spread, such as that of Wong, without first forming a super-stabilized nut spread, will not yield a satisfactory

product. Moreover, Applicant's claims specifically recite the inclusion of a super-stabilized nut spread in the claimed snack bar and process for making the snack bar.

Similarly, Jif recipes do not teach or suggest the use of a super-stabilized nut spread in any recipe. The Jif recipes teach the use of Jif peanut butter, which is regular peanut butter sold to consumers in grocery stores. Jif peanut butter, used straight out of the jar, is not super-stabilized without undergoing a super-stabilization process. The JIF recipes do not teach or suggest a super-stabilization process. Nowhere do the Jif recipes teach or suggest that the peanut butter should be super-stabilized prior to use, nor do they teach a method of super-stabilizing the peanut butter. Combination of Wong's nut butters, which are not super-stabilized with the JIF recipes, does not teach or suggest a snack bar comprising a center portion, wherein the center portion comprises at least 45% super-stabilized nut spread. Nor does the combination of Wong and Jif recipes teach a process for making a snack bar wherein one of the steps is adding a sufficient quantity of stabilizer to the nut spread to form a super-stabilized nut spread having a penetration value of from about 130 to about 300 penetration units (mm/10) at 21°C.

On page 3 of the Office Action, Examiner asserts that Wong encompasses super-stabilized nut spreads because it discloses up to 15% stabilizer can be added, while Brabbs teaches nut spreads ordinarily comprise 1-5% stabilizer. However, Applicant would like to point out that Wong actually teaches nut spreads that contain up to **5%** stabilizer, and preferably **1-3%** stabilizer. See Wong, column 7, lines 60-63. See also, Wong, Example 1, column 11 (1.85% stabilizer used); Example 2, column 13 (1.85% stabilizer used); and Example 3, column 13 (1.75% stabilizer used). Wong does teach that up to 15% stabilizer can be used in the **premix**, (Wong, column 8, lines 49-50 and 60-61), which is mixed with additional nuts to form the nut spread, (Wong, column 9, lines 37-39) thereby diluting the stabilizer to a level of 5% or less. Nowhere does Wong teach greater than 5% stabilizer in the nut spread itself. There is no teaching or suggestion of super-stabilized nut spreads in Wong.

In view of the remarks made herein, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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